

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2286

Introduced by Assembly Member Wagner

February 21, 2014

An act to amend Sections 6401, 7522, and 22453.1 of, to add Chapter 5.7 (commencing with Section 6460) to Division 3 of, and to repeal Chapter 16 (commencing with Section 22350) of Division 8 of, and to add Chapter 5.7 (commencing with Section 6460) to Division 3 of, the Business and Professions Code, to amend Sections 413.40, 415.21, 417.40, 481.205, 680.330, and 1033.5 of the Code of Civil Procedure, to amend Section 647 of the Evidence Code, and to amend Sections 241, 602, and 602.8 of the Penal Code, relating to process servers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2286, as amended, Wagner. Process servers.

Existing law requires *a process-server server* to register with the county clerk where he or she resides or has a principal place of business. Existing law also requires any corporation or partnership that derives compensation from service of process in this state to register with the county clerk where the corporation or partnership has its principal place of business. Existing law requires the county clerk to retain the certificate of registration, as specified. Existing law also requires the county clerk to receive Live Scan fingerprint results and the presiding judge of the superior court is authorized to review the criminal record of registrants convicted of a felony and to take appropriate action, as specified. Existing law also requires the county clerk to provide a variety of administrative services pertaining to the registration of process servers.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation.

This law would remove oversight of the registration of process servers from the counties and place it within the State Bar of California. *This bill would also make technical, nonsubstantive changes to correct cross references.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6401 of the Business and Professions
2 Code is amended to read:
3 6401. This chapter does not apply to any person engaged in
4 any of the following occupations, provided that the person does
5 not also perform the duties of a legal document assistant in addition
6 to those occupations:
7 (a) Any government employee who is acting in the course of
8 his or her employment.
9 (b) A member of the State Bar of California, or his or her
10 employee, paralegal, or agent, or an independent contractor while
11 acting on behalf of a member of the State Bar.
12 (c) Any employee of a nonprofit, tax-exempt corporation who
13 either assists clients free of charge or is supervised by a member
14 of the State Bar of California who has malpractice insurance.
15 (d) A licensed real estate broker or licensed real estate
16 salesperson, as defined in Chapter 3 (commencing with Section
17 10130) of Part 1 of Division 4, who acts pursuant to subdivision
18 (b) of Section 10131 on an unlawful detainer claim as defined in
19 subdivision (b) of Section 6400, and who is a party to the unlawful
20 detainer action.
21 (e) An immigration consultant, as defined in Chapter 19.5
22 (commencing with Section 22441) of Division 8.
23 (f) A person registered as a process server under Chapter 16 5.7
24 (commencing with Section ~~22350~~ 6460) or a person registered as
25 a professional photocopier under Chapter 20 (commencing with
26 Section 22450) of Division 8.

1 (g) A person who provides services relative to the preparation
2 of security instruments or conveyance documents as an integral
3 part of the provision of title or escrow service.

4 (h) A person who provides services that are regulated by federal
5 law.

6 (i) A person who is employed by, and provides services to, a
7 supervised financial institution, holding company, subsidiary, or
8 affiliate.

9 **SECTION 1.**

10 *SEC. 2.* Chapter 5.7 (commencing with Section 6460) is added
11 to Division 3 of the Business and Professions Code, to read:

12
13 **CHAPTER 5.7. PROCESS SERVERS**
14

15 6460. (a) Any natural person who makes more than 10 services
16 of process within this state during one calendar year, for specific
17 compensation or in expectation of specific compensation, where
18 that compensation is directly attributable to the service of process,
19 shall file and maintain a verified certificate of registration as a
20 process server with the State Bar of California. Any corporation
21 or partnership that derives or expects to derive compensation from
22 service of process within this state shall also file and maintain a
23 verified certificate of registration as a process server with the State
24 Bar of California.

25 (b) This chapter shall not apply to any of the following:

26 (1) Any sheriff, marshal, or government employee who is acting
27 within the course and scope of his or her employment.

28 (2) An attorney or his or her employees, when serving process
29 related to cases for which the attorney is providing legal services.

30 (3) Any person who is specially appointed by a court to serve
31 its process.

32 (4) A licensed private investigator or his or her employees.

33 (5) A professional photocopier registered under Section 22450,
34 or an employee thereof, whose only service of process relates to
35 subpoenas for the production of records, which subpoenas specify
36 that the records be copied by that registered professional
37 photocopier.

38 6461. (a) The certificate of registration of a registrant who is
39 a natural person shall contain the following:

1 (1) The name, age, address, and telephone number of the
2 registrant.

3 (2) A statement, signed by the registrant under penalty of
4 perjury, that the registrant has not been convicted of a felony, or,
5 if the registrant has been convicted of a felony, a copy of a
6 certificate of rehabilitation, expungement, or pardon.

7 (3) A statement that the registrant has been a resident of this
8 state for a period of one year immediately preceding the filing of
9 the certificate.

10 (4) A statement that the registrant will perform his or her duties
11 as a process server in compliance with the provisions of law
12 governing the service of process in this state.

13 (b) The certificate of registration of a registrant who is a
14 partnership or corporation shall contain the following:

15 (1) The names, ages, addresses, and telephone numbers of the
16 general partners or officers.

17 (2) A statement, signed by the general partners or officers under
18 penalty of perjury, that the general partners or officers have not
19 been convicted of a felony.

20 (3) A statement that the partnership or corporation has been
21 organized and existing continuously for a period of one year
22 immediately preceding the filing of the certificate or a responsible
23 managing employee, partner, or officer has been previously
24 registered under this chapter.

25 (4) A statement that the partnership or corporation will perform
26 its duties as a process server in compliance with the provisions of
27 law governing the service of process in this state.

28 (c) The State Bar of California shall retain the certificate of
29 registration for a period of three years following the expiration
30 date of the certificate, after which time the certificate may be
31 destroyed if it is scanned or if the conditions specified in Section
32 26205.1 of the Government Code are met. If the certificate is
33 scanned, the scanned image shall be retained for a period of 10
34 years, after which time that image may be destroyed and,
35 notwithstanding Section 26205.1 of the Government Code, no
36 reproduction thereof need be made or preserved.

37 6461.5. (a) At the time of filing an initial certificate of
38 registration or renewing a certificate of registration that has lapsed,
39 the registrant shall also submit a completed Request for Live Scan
40 form confirming fingerprint submission to the Department of

1 Justice and the Federal Bureau of Investigation, in order to verify
2 that the registrant has not been convicted of a felony. The State
3 Bar of California shall utilize the Subsequent Arrest Notification
4 Contract provided by the Department of Justice for notifications
5 subsequent to the initial certificate of registration.

6 (b) If, after receiving the results of the Request for Live Scan,
7 the State Bar of California is advised that the registrant has been
8 convicted of a felony, the State Bar of California is authorized to
9 review the criminal record and, unless the registrant is able to
10 produce a copy of a certificate of rehabilitation, expungement, or
11 pardon, as specified in paragraph (2) of subdivision (a) of Section
12 ~~22351~~, 6461, notify the registrant that the registration is revoked.
13 An order to show cause for contempt may be issued and served
14 upon any person who fails to surrender a registered process server
15 identification card after a notice of revocation.

16 6462. At the time of filing the initial certificate of registration,
17 a registrant shall pay the following fees to the State Bar of
18 California:

19 (a) A fee of one hundred dollars (\$100).

20 (b) A fee to cover the actual costs of processing the completed
21 fingerprint cards when submitted with the initial certificate of
22 registration.

23 (c) A fee to cover the actual cost of issuing a registered process
24 server identification card.

25 6463. A certificate of registration shall be accompanied by a
26 bond of two thousand dollars (\$2,000), executed by an admitted
27 surety insurer and conditioned upon compliance with the provisions
28 of this chapter and all laws governing the service of process in this
29 state. The total aggregate liability on the bond is limited to two
30 thousand dollars (\$2,000). As an alternative to the bond, the
31 registrant may deposit with the State Bar of California, cash or a
32 money order in the amount of two thousand dollars (\$2,000).

33 6464. A certificate of registration shall be effective for a period
34 of two years or until the date the bond expires, whichever occurs
35 first. Thereafter, a registrant shall file a new certificate of
36 registration or a renewal of the certificate of registration and pay
37 the fee required by Section 6462. A certificate of registration may
38 be renewed up to 60 days prior to its expiration date and the
39 effective date of the renewal shall be the date the current
40 registration expires. The renewal shall be effective for a period of

1 two years from the effective date or until the expiration date of the
2 bond, whichever occurs first.

3 6465. (a) The State Bar of California shall maintain a register
4 of process servers and assign a number and issue an identification
5 card to each process server. The State Bar of California shall issue
6 a temporary identification card, for no additional fee, to applicants
7 who are required to submit Request for Live Scan forms for
8 background checks to the Federal Bureau of Investigation and the
9 Department of Justice. This card shall be valid for 120 days. If
10 clearance is received from the Federal Bureau of Investigation and
11 the Department of Justice within 120 days, the State Bar of
12 California shall immediately issue a permanent identification card
13 to the applicant. Upon request of the applicant, the permanent
14 identification card shall be mailed to the applicant at his or her
15 address of record. Upon renewal of a certificate of registration,
16 the same number shall be assigned, provided there is no lapse in
17 the period of registration.

18 (b) The temporary and permanent identification cards shall be
19 not less than 3 ¼ inches by 2 inches and shall contain at the top
20 the title, “Registered Process Server,” followed by the registrant’s
21 name, address, registration number, and date of expiration. In the
22 case of a natural person, it shall also contain a photograph of the
23 registrant in the lower left corner. The identification card for a
24 partnership or corporation registration shall be issued in the name
25 of the partnership or corporation, and shall not contain a
26 photograph.

27 6466. A registrant shall be responsible at all times for the good
28 conduct of his or her employees acting within the course or scope
29 of their employment, and any person acting as an independent
30 contractor within the course or scope of the agency relationship
31 with the registrant.

32 6466.5. (a) In addition to the information required by
33 ~~subdivision (b) of Section 22360, 6469.5~~, any proof of service of
34 any process which is signed by an independent contractor of a
35 registrant under this chapter shall indicate that the proof of service
36 was signed as an independent contractor of a registered process
37 server. The proof of service shall indicate the number assigned
38 pursuant to Section 6465 of both the independent contractor and
39 the entity registered under this chapter.

1 (b) No registrant shall permit any individual to sign any proof
2 of service of any process as an independent contractor unless all
3 of the following conditions are met:

4 (1) The independent contractor is performing pursuant to a
5 written independent contractor agreement with the registrant.

6 (2) The independent contractor supplies proof of bonding under
7 Section 6463, if applicable.

8 (3) The registrant exercises minimal supervision or control over
9 the means of accomplishing the service of any process assigned
10 by the registrant. The registrant may communicate a deadline for
11 the service of process and request notification that such service
12 has been completed.

13 (4) The registrant imposes no restrictions on the independent
14 contractor's ability to perform services for others registered under
15 this chapter.

16 (5) The independent contractor supplies proof that any required
17 business licenses have been obtained.

18 (c) Persons not meeting the criteria of subdivision (b) shall be
19 treated as employees of the registrant while persons meeting the
20 criteria of subdivision (b) shall be treated as independent
21 contractors.

22 (d) This section shall not preclude an independent determination
23 of employment under any other provision of law.

24 6467. (a) Any person who recovers damages in any action or
25 proceeding for injuries caused by a service of process which was
26 made by a registrant and did not comply with the provisions of
27 law governing the service of process in this state may recover the
28 amount of the damages from the bond required by Section 6463.

29 (b) Whenever there has been a recovery against a bond under
30 subdivision (a), the registrant shall file a new bond or cash deposit
31 within 30 days to reinstate the bond or cash deposit to the amount
32 required by Section 6463. If the registrant does not file the bond
33 within 30 days, the certificate of registration shall be revoked and
34 the remainder of the bond forfeited to the State Bar of California.

35 6468. (a) A certificate of registration may be revoked or
36 suspended whenever it has been determined that the registrant has
37 made a service of process, including service completed by an
38 employee or independent contractor of the registrant, which does
39 not comply with the provisions of law governing the service of

1 process in this state or constitutes an improper service of process
2 not amounting to a violation of law.

3 (b) An investigation concerning the revocation or suspension
4 of a certificate of registration may be commenced at any time at
5 the option of the State Bar of California if the State Bar of
6 California deems it to be appropriate. A complaint by any person
7 who has alleged that he or she has been injured by a service of
8 process shall be investigated by the ~~public prosecutor~~ *State Bar*
9 *of California*. The investigation shall determine if the registrant
10 complied with the provisions of law governing the service of
11 process or constituted improper service of process not amounting
12 to a violation of the law.

13 (c) If the ~~public prosecutor~~ *State Bar of California* determines
14 from the investigation that cause may exist for the suspension or
15 revocation of the certificate of registration, ~~he or she~~ *the State Bar*
16 *of California* shall set the matter for hearing and give notice to the
17 registrant. That hearing shall be conducted in accordance with
18 Chapter 5 (commencing with Section 11500) of Division 3 of Title
19 2 of the Government Code except that the decision of the
20 administrative law judge shall be final. For the purposes of those
21 provisions, the ~~public prosecutor~~ *State Bar of California* shall be
22 deemed to be the agency.

23 (d) If, after the hearing, the State Bar of California is notified
24 after the decision has become effective that the administrative law
25 judge has directed that the registrant's certificate be suspended or
26 revoked, the State Bar of California shall forthwith suspend or
27 revoke the certificate. If the certificate is revoked, the bond or cash
28 deposit required by Section 6463 shall be forfeited to the State Bar
29 of California subject to the right of a person to recover against the
30 bond or cash deposit under Section 6467.

31 6469. Any person who violates any of the provisions of this
32 chapter is guilty of a misdemeanor.

33 6469.5. Any proof of service of any process which is signed
34 by a registrant under this chapter shall indicate the number assigned
35 to the registrant by Section 6465.

36 6469.6. *Any individual, partnership, or corporation properly*
37 *registered with a county clerk prior to the effective date of this*
38 *chapter may continue to perform services of process under the*
39 *county registration until it expires, but shall be registered with the*
40 *State Bar of California after that registration expires.*

1 *SEC. 3. Section 7522 of the Business and Professions Code is*
2 *amended to read:*

3 7522. This chapter does not apply to:

4 (a) A person employed exclusively and regularly by any
5 employer who does not provide contract security services for other
6 entities or persons, in connection with the affairs of such employer
7 only and where there exists an employer-employee relationship if
8 that person at no time carries or uses any deadly weapon in the
9 performance of his or her duties. For purposes of this subdivision,
10 “deadly weapon” is defined to include any instrument or weapon
11 of the kind commonly known as a blackjack, slungshot, billy,
12 sandclub, sandbag, metal knuckles, any dirk, dagger, pistol,
13 revolver, or any other firearm, any knife having a blade longer
14 than five inches, any razor with an unguarded blade and any metal
15 pipe or bar used or intended to be used as a club.

16 (b) An officer or employee of the United States of America, or
17 of this state or a political subdivision thereof, while the officer or
18 employee is engaged in the performance of his or her official
19 duties, including uniformed peace officers employed part time by
20 a public agency pursuant to a written agreement between a chief
21 of police or sheriff and the public agency, provided the part-time
22 employment does not exceed 50 hours in any calendar month.

23 (c) A person engaged exclusively in the business of obtaining
24 and furnishing information as to the financial rating of persons.

25 (d) A charitable philanthropic society or association duly
26 incorporated under the laws of this state which is organized and
27 maintained for the public good and not for private profit.

28 (e) An attorney at law in performing his or her duties as an
29 attorney at law.

30 (f) Admitted insurers and agents and insurance brokers licensed
31 by the state, performing duties in connection with insurance
32 transacted by them.

33 (g) Any bank subject to the jurisdiction of the Commissioner
34 of Financial Institutions of the State of California under Division
35 1 (commencing with Section 99) of the Financial Code or the
36 Comptroller of Currency of the United States.

37 (h) A person engaged solely in the business of securing
38 information about persons or property from public records.

39 (i) A peace officer of this state or a political subdivision thereof
40 while the peace officer is employed by a private employer to

engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private investigator or contracts for his or her services as or is employed as an armed private investigator. For purposes of this subdivision, “armed private investigator” means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(j) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(k) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(l) Any secured creditor engaged in the repossession of the creditor’s collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(m) The act of serving process by an individual who is registered as a process server pursuant to Section ~~22350~~ 6460.

(n) (1) A person or business engaged in conducting objective observations of consumer purchases of products or services in the public environments of a business establishment by the use of a preestablished questionnaire, provided that person or business entity does not engage in any other activity that requires licensure pursuant to this chapter. The questionnaire may include objective comments.

(2) If a preestablished questionnaire is used as a basis, but not the sole basis, for disciplining or discharging an employee, or for conducting an interview with the employee that might result in the employee being terminated, the employer shall provide the employee with a copy of that questionnaire using the same procedures that an employer is required to follow under Section 2930 of the Labor Code for providing an employee with a copy of a shopping investigator’s report. This subdivision does not exempt from this chapter a person or business described in paragraph (1) if a preestablished questionnaire of that person or business is used as the sole basis for evaluating an employee’s work performance.

(o) Any joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code), or its employees,

1 where either the committee or employee is performing a function
2 authorized by the Labor Management Cooperation Act of 1978,
3 which includes, but is not limited, to monitoring public works
4 projects to ensure that employers are complying with federal and
5 state public works laws.

6 ~~SEC. 2.~~

7 *SEC. 4.* Chapter 16 (commencing with Section 22350) of
8 Division 8 of the Business and Professions Code is repealed.

9 *SEC. 5.* *Section 22453.1 of the Business and Professions Code*
10 *is amended to read:*

11 22453.1. Notwithstanding Section 22453, any person registered
12 pursuant to Chapter ~~16~~ 5.7 (commencing with Section ~~22350~~)
13 ~~6460~~ of Division 3 of shall pay a fee of one hundred dollars (\$100)
14 instead of the fee of one hundred seventy-five dollars (\$175)
15 otherwise required by Section 22453.

16 *SEC. 6.* *Section 413.40 of the Code of Civil Procedure is*
17 *amended to read:*

18 413.40. Any service of summons which complies with the
19 provisions of this chapter shall not be rendered invalid or
20 ineffective because it was made by a person in violation of Chapter
21 ~~16~~ 5.7 (commencing with Section ~~22350~~) ~~6460~~ of Division ~~8~~ 3
22 of the Business and Professions Code.

23 *SEC. 7.* *Section 415.21 of the Code of Civil Procedure is*
24 *amended to read:*

25 415.21. (a) Notwithstanding any other law, any person shall
26 be granted access to a gated community for a reasonable period
27 of time for the sole purpose of performing lawful service of process
28 or service of a subpoena, upon identifying to the guard the person
29 or persons to be served, and upon displaying a current driver's
30 license or other identification, and one of the following:

31 (1) A badge or other confirmation that the individual is acting
32 in his or her capacity as a representative of a county sheriff or
33 marshal.

34 (2) Evidence of current registration as a process server pursuant
35 to Chapter ~~16~~ 5.7 (commencing with Section ~~22350~~) ~~6460~~ of
36 Division ~~8~~ 3 of the Business and Professions Code or of licensure
37 as a private investigator pursuant to Chapter 11.3 (commencing
38 with Section 7512) of Division 3 of the Business and Professions
39 Code.

(b) This section shall only apply to a gated community that is staffed at the time service of process is attempted by a guard or other security personnel assigned to control access to the community.

SEC. 8. Section 417.40 of the Code of Civil Procedure is amended to read:

417.40. Any proof of service ~~which~~ *that* is signed by a person registered under Chapter ~~16~~ 5.7 (commencing with Section ~~22350~~ 6460) of Division ~~8~~ 3 of the Business and Professions Code or his employee or independent contractor shall indicate ~~the county in which he is registered~~ and the number assigned to him pursuant to Section ~~22355~~ 6465 of the Business and Professions Code.

SEC. 9. Section 481.205 of the Code of Civil Procedure is amended to read:

481.205. “Registered process server” means a person registered as a process server pursuant to Chapter ~~16~~ 5.7 (commencing with Section ~~22350~~ 6460) of Division ~~8~~ 3 of the Business and Professions Code.

SEC. 10. Section 680.330 of the Code of Civil Procedure is amended to read:

680.330. “Registered process server” means a person registered as a process server pursuant to Chapter ~~16~~ 5.7 (commencing with Section ~~22350~~ 6460) of Division ~~8~~ 3 of the Business and Professions Code.

SEC. 11. Section 1033.5 of the Code of Civil Procedure is amended to read:

1033.5. (a) The following items are allowable as costs under Section 1032:

- (1) Filing, motion, and jury fees.
- (2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.
- (3) Taking, video recording, and transcribing necessary depositions including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions.
- (4) Service of process by a public officer, registered process server, or other means, as follows:
 - (A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

1 (B) If service is by a process server registered pursuant to
2 Chapter ~~16~~ 5.7 (commencing with Section ~~22350~~ 6460) of
3 Division ~~8~~ 3 of the Business and Professions Code, the recoverable
4 cost is the amount actually incurred in effecting service, including,
5 but not limited to, a stakeout or other means employed in locating
6 the person to be served, unless those charges are successfully
7 challenged by a party to the action.

8 (C) When service is by publication, the recoverable cost is the
9 sum actually incurred in effecting service.

10 (D) When service is by a means other than that set forth in
11 subparagraph (A), (B), or (C), the recoverable cost is the lesser of
12 the sum actually incurred, or the amount allowed to a public officer
13 in this state for that service, except that the court may allow the
14 sum actually incurred in effecting service upon application pursuant
15 to paragraph (4) of subdivision (c).

16 (5) Expenses of attachment including keeper's fees.

17 (6) Premiums on necessary surety bonds.

18 (7) Ordinary witness fees pursuant to Section 68093 of the
19 Government Code.

20 (8) Fees of expert witnesses ordered by the court.

21 (9) Transcripts of court proceedings ordered by the court.

22 (10) Attorney's fees, when authorized by any of the following:

23 (A) Contract.

24 (B) Statute.

25 (C) Law.

26 (11) Court reporter fees as established by statute.

27 (12) Court interpreter fees for a qualified court interpreter
28 authorized by the court for an indigent person represented by a
29 qualified legal services project, as defined in Section 6213 of the
30 Business and Professions Code or a pro bono attorney as defined
31 in Section 8030.4 of the Business and Professions Code.

32 (13) Models and blowups of exhibits and photocopies of exhibits
33 may be allowed if they were reasonably helpful to aid the trier of
34 fact.

35 (14) Any other item that is required to be awarded to the
36 prevailing party pursuant to statute as an incident to prevailing in
37 the action at trial or on appeal.

38 (b) The following items are not allowable as costs, except when
39 expressly authorized by law:

40 (1) Fees of experts not ordered by the court.

- 1 (2) Investigation expenses in preparing the case for trial.
- 2 (3) Postage, telephone, and photocopying charges, except for
- 3 exhibits.
- 4 (4) Costs in investigation of jurors or in preparation for voir
- 5 dire.
- 6 (5) Transcripts of court proceedings not ordered by the court.
- 7 (c) Any award of costs shall be subject to the following:
- 8 (1) Costs are allowable if incurred, whether or not paid.
- 9 (2) Allowable costs shall be reasonably necessary to the conduct
- 10 of the litigation rather than merely convenient or beneficial to its
- 11 preparation.
- 12 (3) Allowable costs shall be reasonable in amount.
- 13 (4) Items not mentioned in this section and items assessed upon
- 14 application may be allowed or denied in the court's discretion.
- 15 (5) When any statute of this state refers to the award of "costs
- 16 and attorney's fees," attorney's fees are an item and component
- 17 of the costs to be awarded and are allowable as costs pursuant to
- 18 subparagraph (B) of paragraph (10) of subdivision (a). Any claim
- 19 not based upon the court's established schedule of attorney's fees
- 20 for actions on a contract shall bear the burden of proof. Attorney's
- 21 fees allowable as costs pursuant to subparagraph (B) of paragraph
- 22 (10) of subdivision (a) may be fixed as follows: (A) upon a noticed
- 23 motion, (B) at the time a statement of decision is rendered, (C)
- 24 upon application supported by affidavit made concurrently with a
- 25 claim for other costs, or (D) upon entry of default judgment.
- 26 Attorney's fees allowable as costs pursuant to subparagraph (A)
- 27 or (C) of paragraph (10) of subdivision (a) shall be fixed either
- 28 upon a noticed motion or upon entry of a default judgment, unless
- 29 otherwise provided by stipulation of the parties.
- 30 Attorney's fees awarded pursuant to Section 1717 of the Civil
- 31 Code are allowable costs under Section 1032 of this code as
- 32 authorized by subparagraph (A) of paragraph (10) of subdivision
- 33 (a).
- 34 *SEC. 12. Section 647 of the Evidence Code is amended to read:*
- 35 647. The return of a process server registered pursuant to
- 36 Chapter ~~16~~ 5.7 (commencing with Section ~~22350~~ 6460) of
- 37 Division ~~8~~ 3 of the Business and Professions Code upon process
- 38 or notice establishes a presumption, affecting the burden of
- 39 producing evidence, of the facts stated in the return.
- 40 *SEC. 13. Section 241 of the Penal Code is amended to read:*

1 241. (a) An assault is punishable by a fine not exceeding one
2 thousand dollars (\$1,000), or by imprisonment in the county jail
3 not exceeding six months, or by both the fine and imprisonment.

4 (b) When an assault is committed against the person of a parking
5 control officer engaged in the performance of his or her duties,
6 and the person committing the offense knows or reasonably should
7 know that the victim is a parking control officer, the assault is
8 punishable by a fine not exceeding two thousand dollars (\$2,000),
9 or by imprisonment in the county jail not exceeding six months,
10 or by both the fine and imprisonment.

11 (c) When an assault is committed against the person of a peace
12 officer, firefighter, emergency medical technician, mobile intensive
13 care paramedic, lifeguard, process server, traffic officer, code
14 enforcement officer, animal control officer, or search and rescue
15 member engaged in the performance of his or her duties, or a
16 physician or nurse engaged in rendering emergency medical care
17 outside a hospital, clinic, or other health care facility, and the
18 person committing the offense knows or reasonably should know
19 that the victim is a peace officer, firefighter, emergency medical
20 technician, mobile intensive care paramedic, lifeguard, process
21 server, traffic officer, code enforcement officer, animal control
22 officer, or search and rescue member engaged in the performance
23 of his or her duties, or a physician or nurse engaged in rendering
24 emergency medical care, the assault is punishable by a fine not
25 exceeding two thousand dollars (\$2,000), or by imprisonment in
26 a county jail not exceeding one year, or by both the fine and
27 imprisonment.

28 (d) As used in this section, the following definitions apply:

29 (1) Peace officer means any person defined in Chapter 4.5
30 (commencing with Section 830) of Title 3 of Part 2.

31 (2) “Emergency medical technician” means a person possessing
32 a valid course completion certificate from a program approved by
33 the State Department of Health Care Services for the medical
34 training and education of ambulance personnel, and who meets
35 the standards of Division 2.5 (commencing with Section 1797) of
36 the Health and Safety Code.

37 (3) “Mobile intensive care paramedic” refers to those persons
38 who meet the standards set forth in Division 2.5 (commencing
39 with Section 1797) of the Health and Safety Code.

(4) “Nurse” means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) “Lifeguard” means a person who is:

(A) Employed as a lifeguard by the state, a county, or a city, and is designated by local ordinance as a public officer who has a duty and responsibility to enforce local ordinances and misdemeanors through the issuance of citations.

(B) Wearing distinctive clothing which includes written identification of the person’s status as a lifeguard and which clearly identifies the employing organization.

(6) “Process server” means any person who meets the standards or is expressly exempt from the standards set forth in Section ~~22350~~ 6460 of the Business and Professions Code.

(7) “Traffic officer” means any person employed by a county or city to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(8) “Animal control officer” means any person employed by a county or city for purposes of enforcing animal control laws or regulations.

(9) (A) “Code enforcement officer” means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, that has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) “Code enforcement officer” also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1

(commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(10) "Parking control officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking.

(11) "Search and rescue member" means any person who is part of an organized search and rescue team managed by a governmental agency.

SEC. 14. Section 602 of the Penal Code is amended to read:

602. Except as provided in subdivision (u), subdivision (v), subdivision (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard, or notice is intended to indicate or designate a road or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner,

1 any notice, advertisement, or designation of, or any name for any
2 commodity, whether for sale or otherwise, or any picture, sign, or
3 device intended to call attention to it.

4 (g) Entering upon any lands owned by any other person whereon
5 oysters or other shellfish are planted or growing; or injuring,
6 gathering, or carrying away any oysters or other shellfish planted,
7 growing, or on any of those lands, whether covered by water or
8 not, without the license of the owner or legal occupant; or
9 damaging, destroying, or removing, or causing to be removed,
10 damaged, or destroyed, any stakes, marks, fences, or signs intended
11 to designate the boundaries and limits of any of those lands.

12 (h) (1) Entering upon lands or buildings owned by any other
13 person without the license of the owner or legal occupant, where
14 signs forbidding trespass are displayed, and whereon cattle, goats,
15 pigs, sheep, fowl, or any other animal is being raised, bred, fed,
16 or held for the purpose of food for human consumption; or injuring,
17 gathering, or carrying away any animal being housed on any of
18 those lands, without the license of the owner or legal occupant; or
19 damaging, destroying, or removing, or causing to be removed,
20 damaged, or destroyed, any stakes, marks, fences, or signs intended
21 to designate the boundaries and limits of any of those lands.

22 (2) In order for there to be a violation of this subdivision, the
23 trespass signs under paragraph (1) must be displayed at intervals
24 not less than three per mile along all exterior boundaries and at all
25 roads and trails entering the land.

26 (3) This subdivision shall not be construed to preclude
27 prosecution or punishment under any other provision of law,
28 including, but not limited to, grand theft or any provision that
29 provides for a greater penalty or longer term of imprisonment.

30 (i) Willfully opening, tearing down, or otherwise destroying
31 any fence on the enclosed land of another, or opening any gate,
32 bar, or fence of another and willfully leaving it open without the
33 written permission of the owner, or maliciously tearing down,
34 mutilating, or destroying any sign, signboard, or other notice
35 forbidding shooting on private property.

36 (j) Building fires upon any lands owned by another where signs
37 forbidding trespass are displayed at intervals not greater than one
38 mile along the exterior boundaries and at all roads and trails
39 entering the lands, without first having obtained written permission

1 from the owner of the lands or the owner's agent, or the person in
2 lawful possession.

3 (k) Entering any lands, whether unenclosed or enclosed by
4 fence, for the purpose of injuring any property or property rights
5 or with the intention of interfering with, obstructing, or injuring
6 any lawful business or occupation carried on by the owner of the
7 land, the owner's agent, or by the person in lawful possession.

8 (l) Entering any lands under cultivation or enclosed by fence,
9 belonging to, or occupied by, another, or entering upon uncultivated
10 or unenclosed lands where signs forbidding trespass are displayed
11 at intervals not less than three to the mile along all exterior
12 boundaries and at all roads and trails entering the lands without
13 the written permission of the owner of the land, the owner's agent,
14 or of the person in lawful possession, and

15 (1) Refusing or failing to leave the lands immediately upon
16 being requested by the owner of the land, the owner's agent or by
17 the person in lawful possession to leave the lands, or

18 (2) Tearing down, mutilating, or destroying any sign, signboard,
19 or notice forbidding trespass or hunting on the lands, or

20 (3) Removing, injuring, unlocking, or tampering with any lock
21 on any gate on or leading into the lands, or

22 (4) Discharging any firearm.

23 (m) Entering and occupying real property or structures of any
24 kind without the consent of the owner, the owner's agent, or the
25 person in lawful possession.

26 (n) Driving any vehicle, as defined in Section 670 of the Vehicle
27 Code, upon real property belonging to, or lawfully occupied by,
28 another and known not to be open to the general public, without
29 the consent of the owner, the owner's agent, or the person in lawful
30 possession. This subdivision shall not apply to any person described
31 in ~~Section 22350~~ 6460 of the Business and Professions Code who
32 is making a lawful service of process, provided that upon exiting
33 the vehicle, the person proceeds immediately to attempt the service
34 of process, and leaves immediately upon completing the service
35 of process or upon the request of the owner, the owner's agent, or
36 the person in lawful possession.

37 (o) Refusing or failing to leave land, real property, or structures
38 belonging to or lawfully occupied by another and not open to the
39 general public, upon being requested to leave by (1) a peace officer
40 at the request of the owner, the owner's agent, or the person in

1 lawful possession, and upon being informed by the peace officer
2 that he or she is acting at the request of the owner, the owner's
3 agent, or the person in lawful possession, or (2) the owner, the
4 owner's agent, or the person in lawful possession. The owner, the
5 owner's agent, or the person in lawful possession shall make a
6 separate request to the peace officer on each occasion when the
7 peace officer's assistance in dealing with a trespass is requested.
8 However, a single request for a peace officer's assistance may be
9 made to cover a limited period of time not to exceed 30 days and
10 identified by specific dates, during which there is a fire hazard or
11 the owner, owner's agent, or person in lawful possession is absent
12 from the premises or property. In addition, a single request for a
13 peace officer's assistance may be made for a period not to exceed
14 six months when the premises or property is closed to the public
15 and posted as being closed. However, this subdivision shall not
16 be applicable to persons engaged in lawful labor union activities
17 which are permitted to be carried out on the property by the
18 Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations
19 Act of 1975 (Part 3.5 (commencing with Section 1140) of Division
20 2 of the Labor Code) or by the National Labor Relations Act. For
21 purposes of this section, land, real property, or structures owned
22 or operated by any housing authority for ~~tenants~~ *tenants*, as defined
23 under Section 34213.5 of the Health and Safety ~~Code~~ *Code*,
24 constitutes property not open to the general public; however, this
25 subdivision shall not apply to persons on the premises who are
26 engaging in activities protected by the California or United States
27 Constitution, or to persons who are on the premises at the request
28 of a resident or management and who are not loitering or otherwise
29 suspected of violating or actually violating any law or ordinance.
30 (p) Entering upon any lands declared closed to entry as provided
31 in Section 4256 of the Public Resources Code, if the closed areas
32 shall have been posted with notices declaring the closure, at
33 intervals not greater than one mile along the exterior boundaries
34 or along roads and trails passing through the lands.
35 (q) Refusing or failing to leave a public building of a public
36 agency during those hours of the day or night when the building
37 is regularly closed to the public upon being requested to do so by
38 a regularly employed guard, watchperson, or custodian of the
39 public agency owning or maintaining the building or property, if

1 the surrounding circumstances would indicate to a reasonable
2 person that the person has no apparent lawful business to pursue.

3 (r) Knowingly skiing in an area or on a ski trail which is closed
4 to the public and which has signs posted indicating the closure.

5 (s) Refusing or failing to leave a hotel or motel, where he or
6 she has obtained accommodations and has refused to pay for those
7 accommodations, upon request of the proprietor or manager, and
8 the occupancy is exempt, pursuant to subdivision (b) of Section
9 1940 of the Civil Code, from Chapter 2 (commencing with Section
10 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For
11 purposes of this subdivision, occupancy at a hotel or motel for a
12 continuous period of 30 days or less shall, in the absence of a
13 written agreement to the contrary, or other written evidence of a
14 periodic tenancy of indefinite duration, be exempt from Chapter
15 2 (commencing with Section 1940) of Title 5 of Part 4 of Division
16 3 of the Civil Code.

17 (t) (1) Entering upon private property, including contiguous
18 land, real property, or structures thereon belonging to the same
19 owner, whether or not generally open to the public, after having
20 been informed by a peace officer at the request of the owner, the
21 owner's agent, or the person in lawful possession, and upon being
22 informed by the peace officer that he or she is acting at the request
23 of the owner, the owner's agent, or the person in lawful possession,
24 that the property is not open to the particular person; or refusing
25 or failing to leave the property upon being asked to leave the
26 property in the manner provided in this subdivision.

27 (2) This subdivision shall apply only to a person who has been
28 convicted of a crime committed upon the particular private
29 property.

30 (3) A single notification or request to the person as set forth
31 above shall be valid and enforceable under this subdivision unless
32 and until rescinded by the owner, the owner's agent, or the person
33 in lawful possession of the property.

34 (4) Where the person has been convicted of a violent felony, as
35 described in subdivision (c) of Section 667.5, this subdivision shall
36 apply without time limitation. Where the person has been convicted
37 of any other felony, this subdivision shall apply for no more than
38 five years from the date of conviction. Where the person has been
39 convicted of a misdemeanor, this subdivision shall apply for no
40 more than two years from the date of conviction. Where the person

1 was convicted for an infraction pursuant to Section 490.1, this
2 subdivision shall apply for no more than one year from the date
3 of conviction. This subdivision shall not apply to convictions for
4 any other infraction.

5 (u) (1) Knowingly entering, by an unauthorized person, upon
6 any airport operations area, passenger vessel terminal, or public
7 transit facility if the area has been posted with notices restricting
8 access to authorized personnel only and the postings occur not
9 greater than every 150 feet along the exterior boundary, to the
10 extent, in the case of a passenger vessel terminal, as defined in
11 subparagraph (B) of paragraph (3), that the exterior boundary
12 extends shoreside. To the extent that the exterior boundary of a
13 passenger vessel terminal operations area extends waterside, this
14 prohibition shall apply if notices have been posted in a manner
15 consistent with the requirements for the shoreside exterior
16 boundary, or in any other manner approved by the captain of the
17 port.

18 (2) Any person convicted of a violation of paragraph (1) shall
19 be punished as follows:

20 (A) By a fine not exceeding one hundred dollars (\$100).

21 (B) By imprisonment in a county jail not exceeding six months,
22 or by a fine not exceeding one thousand dollars (\$1,000), or by
23 both that fine and imprisonment, if the person refuses to leave the
24 airport or passenger vessel terminal after being requested to leave
25 by a peace officer or authorized personnel.

26 (C) By imprisonment in a county jail not exceeding six months,
27 or by a fine not exceeding one thousand dollars (\$1,000), or by
28 both that fine and imprisonment, for a second or subsequent
29 offense.

30 (3) As used in this subdivision, the following definitions shall
31 control:

32 (A) "Airport operations area" means that part of the airport used
33 by aircraft for landing, taking off, surface maneuvering, loading
34 and unloading, refueling, parking, or maintenance, where aircraft
35 support vehicles and facilities exist, and which is not for public
36 use or public vehicular traffic.

37 (B) "Passenger vessel terminal" means only that portion of a
38 harbor or port facility, as described in Section 105.105(a)(2) of
39 Title 33 of the Code of Federal Regulations, with a secured area
40 that regularly serves scheduled commuter or passenger operations.

1 For the purposes of this section, “passenger vessel terminal” does
2 not include any area designated a public access area pursuant to
3 Section 105.106 of Title 33 of the Code of Federal Regulations.

4 (C) “Public transit facility” has the same meaning as specified
5 in Section 171.7.

6 (D) “Authorized personnel” means any person who has a valid
7 airport identification card issued by the airport operator or has a
8 valid airline identification card recognized by the airport operator,
9 or any person not in possession of an airport or airline identification
10 card who is being escorted for legitimate purposes by a person
11 with an airport or airline identification card. “Authorized
12 personnel” also means any person who has a valid port
13 identification card issued by the harbor operator, or who has a
14 valid company identification card issued by a commercial maritime
15 enterprise recognized by the harbor operator, or any other person
16 who is being escorted for legitimate purposes by a person with a
17 valid port or qualifying company identification card. “Authorized
18 personnel” also means any person who has a valid public transit
19 employee identification.

20 (E) “Airport” means any facility whose function is to support
21 commercial aviation.

22 (v) (1) Except as permitted by federal law, intentionally
23 avoiding submission to the screening and inspection of one’s
24 person and accessible property in accordance with the procedures
25 being applied to control access when entering or reentering a sterile
26 area of an airport, passenger vessel terminal, as defined in Section
27 171.5, or public transit facility, as defined in subdivision (u), if
28 the sterile area is posted with a statement providing reasonable
29 notice that prosecution may result from a trespass described in this
30 subdivision, is a violation of this subdivision, punishable by a fine
31 of not more than five hundred dollars (\$500) for the first offense.
32 A second and subsequent violation is a misdemeanor, punishable
33 by imprisonment in a county jail for a period of not more than one
34 year, or by a fine not to exceed one thousand dollars (\$1,000), or
35 by both that fine and imprisonment.

36 (2) Notwithstanding paragraph (1), if a first violation of this
37 subdivision is responsible for the evacuation of an airport terminal,
38 passenger vessel terminal, or public transit facility and is
39 responsible in any part for delays or cancellations of scheduled

1 flights or departures, it is punishable by imprisonment of not more
2 than one year in a county jail.

3 (w) Refusing or failing to leave a battered women's shelter at
4 any time after being requested to leave by a managing authority
5 of the shelter.

6 (1) A person who is convicted of violating this subdivision shall
7 be punished by imprisonment in a county jail for not more than
8 one year.

9 (2) The court may order a defendant who is convicted of
10 violating this subdivision to make restitution to a battered woman
11 in an amount equal to the relocation expenses of the battered
12 woman and her children if those expenses are incurred as a result
13 of trespass by the defendant at a battered women's shelter.

14 (x) (1) Knowingly entering or remaining in a neonatal unit,
15 maternity ward, or birthing center located in a hospital or clinic
16 without lawful business to pursue therein, if the area has been
17 posted so as to give reasonable notice restricting access to those
18 with lawful business to pursue therein and the surrounding
19 circumstances would indicate to a reasonable person that he or she
20 has no lawful business to pursue therein. Reasonable notice is that
21 which would give actual notice to a reasonable person, and is
22 posted, at a minimum, at each entrance into the area.

23 (2) Any person convicted of a violation of paragraph (1) shall
24 be punished as follows:

25 (A) As an infraction, by a fine not exceeding one hundred dollars
26 (\$100).

27 (B) By imprisonment in a county jail not exceeding one year,
28 or by a fine not exceeding one thousand dollars (\$1,000), or by
29 both that fine and imprisonment, if the person refuses to leave the
30 posted area after being requested to leave by a peace officer or
31 other authorized person.

32 (C) By imprisonment in a county jail not exceeding one year,
33 or by a fine not exceeding two thousand dollars (\$2,000), or by
34 both that fine and imprisonment, for a second or subsequent
35 offense.

36 (D) If probation is granted or the execution or imposition of
37 sentencing is suspended for any person convicted under this
38 subdivision, it shall be a condition of probation that the person
39 participate in counseling, as designated by the court, unless the
40 court finds good cause not to impose this requirement. The court

1 shall require the person to pay for this counseling, if ordered, unless
2 good cause not to pay is shown.

3 (y) Except as permitted by federal law, intentionally avoiding
4 submission to the screening and inspection of one's person and
5 accessible property in accordance with the procedures being applied
6 to control access when entering or reentering a courthouse or a
7 city, county, city and county, or state building if entrances to the
8 courthouse or the city, county, city and county, or state building
9 have been posted with a statement providing reasonable notice
10 that prosecution may result from a trespass described in this
11 subdivision.

12 *SEC. 15. Section 602.8 of the Penal Code is amended to read:*

13 602.8. (a) Any person who without the written permission of
14 the landowner, the owner's agent, or the person in lawful
15 possession of the land, willfully enters any lands under cultivation
16 or enclosed by fence, belonging to, or occupied by, another, or
17 who willfully enters upon uncultivated or unenclosed lands where
18 signs forbidding trespass are displayed at intervals not less than
19 three to the mile along all exterior boundaries and at all roads and
20 trails entering the lands, is guilty of a public offense.

21 (b) Any person convicted of a violation of subdivision (a) shall
22 be punished as follows:

23 (1) A first offense is an infraction punishable by a fine of
24 seventy-five dollars (\$75).

25 (2) A second offense on the same land or any contiguous land
26 of the same landowner, without the permission of the landowner,
27 the landowner's agent, or the person in lawful possession of the
28 land, is an infraction punishable by a fine of two hundred fifty
29 dollars (\$250).

30 (3) A third or subsequent offense on the same land or any
31 contiguous land of the same landowner, without the permission
32 of the landowner, the landowner's agent, or the person in lawful
33 possession of the land, is a misdemeanor.

34 (c) Subdivision (a) shall not apply to any of the following:

35 (1) Any person engaged in lawful labor union activities which
36 are permitted to be carried out on property by the ~~California~~
37 *Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations*
38 ~~Act~~, *Act of 1975*, Part 3.5 (commencing with Section 1140) of
39 Division 2 of the Labor Code, or by the National Labor Relations
40 Act.

1 (2) Any person on the premises who is engaging in activities
2 protected by the California or United States Constitution.

3 (3) Any person described in Section ~~22350~~ 6460 of the Business
4 and Professions Code who is making a lawful service of process.

5 (4) Any person licensed pursuant to Chapter 15 (commencing
6 with Section 8700) of Division 3 of the Business and Professions
7 Code who is engaged in the lawful practice of land surveying as
8 authorized by Section 846.5 of the Civil Code.

9 (d) For any infraction charged pursuant to this section, the
10 defendant shall have the option to forfeit bail in lieu of making a
11 court appearance. Notwithstanding subdivision (e) of Section
12 853.6, if the offender elects to forfeit bail pursuant to this
13 subdivision, no further proceedings shall be had in the case.